

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

10 UNITED STATES OF AMERICA, ) 3:13-cr-00011-HDM-WGC  
11 Plaintiff, ) 3:14-cv-00650-HDM  
12 vs. ) ORDER  
13 BYRON TRENT DAVIS, )  
14 Defendant. )

16 Before the court is the defendant's application to strike the  
17 affidavit of Mary Boetsch (#75). The government has responded  
18 (#79), and defendant has replied (#80). On November 23, 2015,  
19 defendant filed a supplement to the application (#90). The  
government has responded (#95), and defendant has replied (#98).

On December 9, 2014, defendant filed a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. The motion raised a number of ineffective assistance of counsel claims directed at defendant's former counsel, Mary Boetsch. On January 20, 2015, the court granted the government's motion for order deeming the attorney-client privilege waived and directed Boetsch to provide the government with an affidavit responsive to defendant's allegations.

1 On March 19, 2015, Boetsch's affidavit was filed along with  
2 the government's response to defendant's petition. On May 27,  
3 2015, defendant filed an application to strike Boetsch's affidavit.  
4 On October 16, 2015, the court denied the majority of defendant's  
5 arguments - many of which had been denied before - but reserved on  
6 ruling on any objections defendant had to specific lines of the  
7 affidavit. The court directed the defendant to file a supplement  
8 identifying "each line or paragraph that he believes is beyond the  
9 permissible scope of the waiver of his privilege." (Doc. #87).

10           Defendant's supplement filed November 23, 2015, identifies a  
11 number of specific lines and paragraphs that he argues should be  
12 stricken. The objections are largely without merit. Most of  
13 Boetsch's affidavit responds to defendant's claims of ineffective  
14 assistance of counsel. Many of the statements relate directly to  
15 claims defendant has made; others relate indirectly but explain the  
16 strategy underlying those decisions of Boetsch's that defendant  
17 challenges. There is no basis for striking any such statements.  
18 However, a handful of statements are in fact either irrelevant or  
19 unnecessary to respond to defendant's motion, and as to those  
20 statements the defendant's objections are sustained. Those  
21 statements are:

- Page 3:21-24: Beginning "We viewed a portion. . . ." and ending with "We did not view that portion."
- Page 5:17-6:6: Beginning "Mr. Davis was the sole provider . . . ." and ending "he attended the classes."
- Page 7:5-9: Beginning "Due to the nature . . . ." and ending "prior to telling his wife."
- Page 8:3-5: Beginning "After Mr. Davis was sentenced . . .

1 .” and ending “now had to pay.”

2 The defendant’s application to strike (#75, #90) is therefore  
3 **GRANTED IN PART**, and the lines of Boetsch’s affidavit set forth  
4 above are hereby **STRICKEN** from her affidavit.

5 IT IS SO ORDERED.

6 DATED: This 2nd day of May, 2016.

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9 UNITED STATES DISTRICT JUDGE

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